# An Introduction to International Islamic humanitarian law (IIHL )

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**In the name of God the most Merciful, the most Compassionate**

**"O you who believe! Stand out firmly for Allah as just witnesses; and let not the enmity and hatred of others make you avoid justice. Be just: that is nearer to piety; and fear Allah. Verily, Allah is Well-Acquainted with what you do."**

**(A translation of Quran by Mohsin Khan, 4:8)**

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## Preface:

Over the history of mankind, lawmakers have tried hard to stop the Blood Rivers caused by wars and armed conflicts. As humans develop their thoughts to design an effective system to block or reduce, at least, the number of murders and casualties of wars, the number of wars and their negative effects has increased significantly.

Many scholars have worked hard throughout history to humanize armed conflicts and protect civilians who do not participate in armed operations. This great effort made by scholars and human rights activists ended up with a collection of international rules called "international **humanitarian law, "which consists of a set of international conventions and customs of wars. Nevertheless, these rules could not, right now, protect humanity from war atrocities.**

Almighty Allah, throughout his divine religions, set comprehensive rules that regulate the use of force in war. In Islam, saving lives is so important, as God says in verse (32) chapter from the Quran "**If anyone killed a person not in retaliation of murder, or (and) to spread mischief in the land - it would be as if he killed all mankind, and if anyone saved a life, it would be as if he saved the life of all**

**mankind. “That means, in terms of war ,the killing of your enemy must rely on a lawful cause . If civilians do not contribute to military operations , Muslims are not entitled to kill them.**

Furthermore, Islamic law or what is so-called "shariah" dealt with the issues of war and its results a long time ago, before the Geneva Conventions and all other work related to human issues in war were contracted. Early Islamic scholars gave great concern for war issues, and you will find special sections in Muslim traditions books speak about war, obligations and rights of worriers and so on.

One great scholar called All Shebany[1] wrote a comprehensive book about war in Islam called “ Al-sayr el-kubra “ this book considered to be a milestone in international Islamic humanitarian law. Imam Al-Shaibani discussed in his book many rules related to war, the most important of which are the rulings on carrying weapons, fighting, prisoners, transactions that occur during wartime, the treatment of civilians and spoils, and the protection of the environment and those not participating in the fighting[2].

[1] - He is Muhammad bin Al-Hasan Al-Shaibani, one of the scholars and imams of the Hanafi school of thought. He was born in 131 AH and died in 189 AH.

[2] - See: Abdul Rahman Omar Al-Mahi, The Contribution of Imam Muhammad Al-Hassan Al-Shaibani to International Law, Journal of Emir Abdelkader University for Islamic Sciences, February 2023, p. 57.

It is worth noting that this book does not address any details or doctrinal disputes, and the writer presents his views based on the overall principles of Islamic law drawn from the Holy Quran and the Sunnah.

**Abbreviations**:

I will refer to Islamic international humanitarian law as (IIHL).

SAWS: sallallahu alayhi wa salaam, which means "may God's prayers and peace be with him."

# Chapter one: general concepts about the IIHL.

## First: when did it come up?

The rules of international Islamic humanitarian law appeared to exist more than 1400 years ago, specifically with the beginning of the movement of the first Muslims and their defensive wars against their enemies. Actually, it appeared since the outset of Islam when the prophet Mohamed (SAWS) was calling Allah to bestow mercy upon his people despite all sorts of abuse he was subjected to. It is narrated that the prophet Mohamed (saws) was asked, "Messenger of Allah, invoke a curse for us against the idolaters." He replied, I was not sent as a curser. I was sent as mercy[1]. It is natural for the oppressed to pray for the destruction of the enemies, but the Messenger Muhammad (saws) refused to pray for the destruction of his enemies because he was only sent as a mercy to mankind.

The sources of the IIHL began to appear in the Noble Qur'an, which includes clear rules and texts calling for justice, fairness, and mercy with the enemies. Then the commands of the Prophet (SAWS) to the soldiers in wars constituted a major source for the rules of this law.

[1] - Al-Adab Al-Mufrad 321Chapter 149: Cursing an unbeliever, Book 15: https://sunnah.com/adab:321.

The military agreements concluded by the Muslim commanders also included many rules of war, as well as the provisions of their orders that work to make war more humane and merciful.

Muslim scholars collected these rules in their books and left a great legacy of rules and provisions in this field. Contemporary Islamic jurisprudence is still providing more in this field, allowing the renewal of the rules of this law and making them updateable with recent developments.

It is worth noting that Islamic legislation in its early ages did not pay attention to the modern divisions of law and its terminology that we know now, but this does not mean that Islamic international humanitarian law did not exist.

For example, the rules of the English constitutional law appeared in the form of a set of unwritten rules a long time ago, and no one said that the English constitutional law did not exist because it was not codified.

## Second: Where did the rules of the IIHL appear?

In the Arabian Peninsula, with the advent of Islam, the rules of international Islamic humanitarian law began to be formed, developed, and completed. Through provisions and texts mentioned in the Noble Qur'an, prophetic hadiths, and

the actions of Muslim leaders in various wars and invasions, and the agreements they made, the rules of this law were formed. Let us take a complete picture of the place and time in which the rules of international Islamic humanitarian law were formed. The population of the Arabian Peninsula at that time consisted of a group of Arabian tribes, and war and raiding between tribes were very widespread at that time.

The Arab tribes were fighting each other for reasons related to obtaining water, food resources, land, business, political reasons and so on. When Islam appeared, the " Quraish" tribe was the tribe based on serving the pilgrims who came to the House of God in Mecca. Most of the Quraish leaders did not accept the idea of monotheism and the new religion" Islam", which was in conflict with the idolatry that was widespread at the time.

The emergence and spread of Islam meant the elimination of the Quraish, their pagan religion, and their business related to serving pilgrims. Hence, the first goal of the Quraish since the dawn of Islam was to eliminate Muslims and this new religion by all means. Prophet Mohamed ( SAWS) and his followers were subjected to various forms of physical and moral abuse. Thus, the picture consisted of a weak minority of Muslims and a dominant majority of disbelievers that

wanted to eliminate this minority. In such circumstances, the rules of the IIHL began to emerge and develop.

At this early stage , I would like to point out some significant points :

- Weapons at that time were so primitive and based on non-mechanical techniques. The most important weapons used at that time were swords, daggers, bows and arrows, spears, pins, axes, and catapults.
- At that time, weapons of mass destruction were completely unknown.
- The war is based on confrontation between the warring parties. It usually begins with a duel between the strongest combatants.
- There were no intercontinental missiles, air strikes, or drones, and victory depended on strength and skills.

## Third: had it been set up by any convention?

Unlike the four Geneva Conventions, there is no international agreement that includes the rules of international Islamic humanitarian law. Bearing in mind that there are some bilateral agreements that the early Muslims concluded with non-Muslims, and they included some

humanitarian provisions. Such as the treaties that the early Muslims concluded with "the Christians of Najran in the year 10 AH/631 AD, with the Jews of Fadak, Ayla and Tayma, and with the Banu Sakhr of Kinanah"[1].For instance, these treaties include many provisions, such as achieving peaceful coexistence between Muslims and non-Muslims, protecting non-Muslims from any external aggression, and securing non-Muslims' lives, property, and religion.

## Fourth: do all human beings benefit from the IIHL?

The IIHL does not know any distinction between Muslims and non-Muslims, as it aims to maintain human dignity and save human lives in war.

This means that if a Muslim country enters into a state of war with a non-Muslim country, the IIHL rules must be implemented without a request from the other party, as it is a binding and self-applied law.

On the other hand, civilians affiliated with the other party have the right to demand the implementation of the provisions of the IIHL and stop any assault that could happen to them. They have the right to compensation for the damages they have suffered. Hence, the knowledge of the

[1] - Quoted from Professor Dr. Ali Gomaa, Treaties and Islamic Foreign Policy, https://www.draligomaa.com/index.php

provisions of the IIHL is of particular importance at the level of human rights.

## Fifth: Is the IIHL a universal and permanent law that suits all times and places?

Like any other system, law develops and is shaped according to the conditions and needs of the society and the era's developments.

When the IIHL began to emerge, the tools of war known at that time were the sword, dagger, arrows, other primitive weapons, and modern means of warfare such as tanks, armored vehicles, missile carriers, biological and chemical weapons were not known at the time.

Islamic jurisprudence and additional sources of Islamic law allow the IIHL rules to be updated and cover the new issues that appear on the ground. Therefore, Islamic legal rules evolve to keep pace with the developments and innovations of the era.

From this point of view, the rules of the IIHL develop to regulate the use of modern means of warfare and their various practices within the framework of the principles governing this law, which makes the rules of this law flexible and valid for application at every time and place.

The development mechanism is represented in the opinions and legislations presented by Muslim jurists, and legislators to ensure the regulation of the use of new war weapons and the limitation of their dire effects on peoples, individuals, and the environment.

## Sixth: Objectives of war in the IIHL:

Islam is a religion based on tolerance and peace and refusing war and fighting because preserving human life and stopping bloodshed is one of the goals of Islamic law. In chapter 2 verse 213, almighty Allah said," Mankind was one single nation, and Allah sent messengers with glad tidings and warnings; and with them He sent the Book in truth, to judge between people in matters wherein they differed……." Also almighty Allah said to Prophet Muhammad (SAWS) when the polytheists who were fighting him asked him to make peace:" And if they incline to peace, then incline to it [also] and rely upon Allah. Indeed, it is He who is the Hearing, the Knowing[1]", The prophet Mohamed (SAWS) used to say to his companions, "O people! Do not wish to meet the enemy, and ask Allah for safety."[2]

For many years, the early Muslims in Mecca endured various forms of torture and physical and moral abuse from the

[1] - A translation of the holy Quran, 8:61.

[2] - Sahih al-Bukhari 3024, 3025 ,Chapter 156: Do not wish to meet the enemy, Book 56: Fighting for the Cause of Allah (Jihaad)
https://sunnah.com/bukhari:3024

polytheists, who aimed to force them to renounce their religion. Despite this, the Muslims did not engage in fighting until they received permission from Allah. The primary goal of fighting in Islam is to protect the Muslims, their homeland, and their religion from the attacks and aggression of the polytheists in Mecca. The objective is not to initiate aggression or target civilians, as some may mistakenly believe.

## Developing the rules of the IIHL:

The IIHL, like any other law, is a living being living in a society that is affected by the phenomena and variables around it. Within Islamic international humanitarian law, the mechanisms and equipment of war change in an amazing way. Jurists say that the texts are limited and the facts are unlimited. Therefore, the IIHL is subject to mechanisms of updating and development.

The IIHL is distinguished in this field in that it includes comprehensive rules that govern war activities, and through these comprehensive rules, we can extract the rulings on new facts and the extent of their

permissibility. For example, it was not mentioned in the writings of the early Muslim jurists to use drones in military operations because humanity did not know these tools at the time, but implementing or applying the comprehensive rules of international Islamic humanitarian law to this new equipment necessarily leads to arriving at a ruling on whether or not these aircraft are permissible.

It must be noted that updating the rules of the IIHL requires great experience and complete knowledge of the sources of this law, its provisions, and the method of extracting these provisions. It must be done by an international body that includes an elite group of Muslim scholars specialized in this field.

### Codification of the rules of the IIHL

It is recommended that the various provisions of the IIHL be compiled into a single code and classified according to the topics they cover. This would ensure that the code serves as a comprehensive reference

that can be applied in all armed conflicts and that everyone can access its provisions.

# Chapter two: Sources of the IIHL:

The IIHL is defined as a set of rules that organize the use of force in armed conflicts in order to moralize and reduce any unnecessary damage that may occur during military operations. The main rules of the IIHL are derived from the Quran and the sayings and acts of the prophet Mohamed (SAWS) .The holy Quran comes on top of the sources of the IIHL. You will find no special chapter in the Quran that speaks about war, but separate verses in different chapters have dealt with the issues of war.

The second source after the Quran is Sunnah, which is the authenticated sayings and actions of the prophet Mohamed (SAWS).Also we have Ijma which is defined as the Consensus of Muslims jurists on the ruling of a case. This source is based on the prophet Mohamed (SAWS) saying, "My community will never agree on an error."[1]

In addition of the Quran, Sunnah, and Ijma, comes ijtihad, which is "independent reasoning "in which jurists try to get the ruling of a case which the first three sources of law have been silent on it. Ijtihad considered to be a significant source of Islamic law as the principles in the Quran and Sunnah tend to be general and there are a lot of cases happening every

[1]- Sunan Ibn Majah 3950, https://sunnah.com/ibnmajah:3950

day which have no ruling in Quran and Sunnah. In the following paragraphs I shall illustrate some rules of the IIHL that have been revealed in the Quran and Sunnah.

## The noble Quran:

The Quran is the primary source of Islamic humanitarian law. The Quran is also known as “the word of Allah Almighty” descended on our master Muhammad (SAWS) transmitted to us quoting frequently ". The Holy Quran contains many verses that regulate the relations of the Islamic state with other countries, whether in war or peace. The Holy Quran also includes some verses that regulate the relations between Muslims and non-Muslims[1]. In verse 32 of chapter no. 5 Almighty Allah says "if anyone killed a person not in retaliation of murder, or to spread mischief in the land - it would be as if he killed all mankind, and if anyone saved a life, it would be as if he saved the life of all mankind." [2] This verse sets the general rule in the prohibition of killing human beings, and it makes clear that the murder of a person without a legitimate reason is similar to the killing of all mankind in order to emphasize the inviolability of the act.

[2] -For instance , in chapter 60, verse 8 , Almighty Allah says “ Allah does not forbid you from those who do not fight you because of religion and do not expel you from your homes - from being righteous toward them and acting justly towards them. Indeed, Allah loves those who act justly.” In order to confirm the relationship of peace and friendship between Muslims and non-Muslims

[3] - A translation of the Quran , by Mohsin Khan.

Also, this verse makes the one who saves person`s life as if he saves all people's lives.

This rule finds many applications in wartime; it is not permissible - in all cases -to kill civilians, women, or children and those who do not participate in military operations. Killing one of these groups is prohibited because it kills innocent people without a legitimate reason.

In another chapter of the Holy Quran, Almighty Allah says: " And they give food in spite of love for it to the needy, the orphan, and the captive"[1]. In this verse, the Creator, "God," describes how the believers provide food to prisoners of war despite the believers' need for it and despite the feelings of enmity between them. Some scholars said this verse was revealed because Ali bin Ibey Tallab[2] was hired to water some palm trees for some barley in return. After he finished the job, he divided the barley into three parts and started to cook the first third after he finished, a poor man came to him so he gave it to him. After that he started to cook the second third of barely and an orphan came to him and he gave it to him then he started to cook the last third and a captive from the disbelievers came to him so he gave him the last third

[1] - A translation of the Quran, by Saheeh International, 76:8.
[2] - Ali ibn Abi Talib was a cousin and son-in-law of the Prophet Muhammad (SWAS), the fourth and last of the rightly guided caliphs.

and stayed with no food as the former verse was revealed[1]. It was also reported that the Messenger would bring the prisoner and hand him over to some Muslims and order them to treat him well, so the Muslims would take him and treat him better than themselves[2].

Other scholars said that the verse was revealed when Abu Al-Dahdah Al-Ansari was fasting and had four loaves of bread with which he and his family would break their fast. He gave one loaf to a poor person, one loaf to an orphan, one loaf to a captive of the infidels, and left one loaf for himself and his family. By doing this, he sets a great example of giving and preferring others over oneself.

Another verse of the Qur'an sets boundaries for the use of force and war instruments and sets out the framework that wars must not exceed, the Great Creator says:" Fight in the way of Allah those who fight you but do not transgress. Indeed. Allah does not like transgressors."3. The jurist Ibn Kathir says in his interpretation of this verse, Its meaning is fighting in the way of God and not committing aggression, and this includes the prohibition of committing forbidden acts, such as mutilating corpses, killing women, children, and the

[1] - Al-Wahidi, Reasons for Revelation, Part 1, p. 231.

[2] - Al-Zamakhshari, Al-Kashshaf, Interpretation of the Qur'an, Part 4, p. 568.

[3] -A translation of the Quran, by Saheeh International,2:190.

elderly, dismembering women, children, and the elderly, burning trees, and killing animals without interest."1

**2-Sunnah:** In general, the Sunnah means the words and deeds of the Prophet Mohamed (SWAS) .The Prophetic Sunnah includes a lot of rules that aim to make war more humane. The Prophet dealt with the war from an ethical perspective, and he called for charity in everything, the Messenger of Allah (SAWS) said:

"Verily, Allah has prescribed proficiency in all things. Thus, if you kill, kill in the least painful manner you can; and when you slaughter an animal, do it in the best possible way; and any of you should sharpen his blades so that the animal may be spared from the suffering of the slaughtering.2"

Sunnah references are full of authentic hadith that describe in-detail the morals and ethics of war. In this regard, below are some of the authentic hadith books that dealt with this issue:

Sahih al-Bukhari.

Sahih Muslim.

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1 - Imam Ibn Katheer, Interpretation of the Great Quran, Dar Al Jaleel, part1 p215.

2 - Hadith 17, 40 Hadith Al Nawawi, Book: Forty Hadith of an-Nawawi, https://sunnah.com/nawawi40:17

Sunan an-Nasa'i.

Sunan Abi Dawud.

Jami` at-Tirmidhi.

Sunan Ibn Majah.

It should be noted that the Sunnah includes general rules that regulate the military behavior of Muslims in times of war, but it does not address detailed rulings that include all incidents that occur in war. Therefore, jurists derive rulings for new incidents that occur in times of war by analogy with the rulings contained in the Qur'an and Sunnah.

## 3- Consensus of Opinion(Ijma')

Ijma means the agreement of Muslim scholars, after the death of Prophet Mohamed, upon a provision of any matter. The provisions of consensus regarding the rules of the IIHL are mentioned in many places in Islamic jurisprudence. Examples of these provisions are as follows:

- Given that participation in military operations requires physical strength and arduous training, it is not fair or merciful to force anyone who is incapable of this work to fight. Therefore, the jurists unanimously agreed that it is not

permissible to force women or children who have not reached puberty, or the sick or the poor, to fight[1].

- The rules of the IIHL are based on the principles of justice, fairness, right, and respect the rights of states and peoples. Therefore, the jurists unanimously agreed that it is not permissible to attack countries unjustly. For example, it is not permissible to attack countries that have concluded treaties with Muslims. These treaties must be respected, and these countries should not be caught off guard by war[2].

-Islam gave a special sanctity to the human body and forbade assaulting it in any form during his life or touching it after his death. Therefore, the jurists unanimously agreed that it is not permissible to mutilate the dead bodies of the enemies or to abuse them[3]. It is not permissible for the Muslim forces to mutilate the dead bodies of the enemy forces or tamper with them in any way.

-The rules of the IIHL support peace and every path that leads to it and call for reconciliation and the cessation of

[1] -Ibn Hazm, Ranks of Consensus, p201, Dr. Saleh bin Obaid Al-Harbi, Encyclopedia of Consensus in Islamic Jurisprudence, vol. 6, p. 62

[2] - abn hazam , almuhalaa bialathar ,VOL 11 , p 97, Dr. Saleh bin Obaid Al-Harbi, Encyclopedia of Consensus in Islamic Jurisprudence, vol. 6, p. 75, , Dr. Saleh bin Obaid Al-Harbi, Encyclopedia of Consensus in Islamic Jurisprudence, vol. 6, p. 102.

[3] - Ibn Qudamah, Al-Mughni, vol. 13, p. 199, Ibn Abidin, Hashiyat Radd al-Muhtar, Ali al-Durr al-Mukhtar, vol. 4, 131,

fighting between the warring parties. Fighting is the last option and the unwanted option for Muslims. The Messenger of God (SAWA)used to say,"O people! Do not long for encountering the enemy, and supplicate to Allah to grant you security.[1]". Therefore, the rules of the IIHL give the messengers, envoys, and ambassadors of the enemy who are sent to negotiate with Muslim leaders special protection, and there is a consensus[2] among the jurists that it is not permissible to kill them or assault them in any way, and they must be protected until they return to their homelands.

- Among the unanimous issues in the jurisprudence of the IIHL is the protection of women and children. The jurists unanimously agreed that it is not permissible to fight women and children as long as they do not participate in military operations[3].

- The elders are completely safe according to the rules of the IIHL. This vulnerable group needs special care and must be spared from the scourge of war. There is a consensus in

[1] - Riyad as-Salihin 53, https://sunnah.com/riyadussalihin:53.
[2] - Dr. Saleh bin Obaid Al-Harbi, Encyclopedia of Consensus in Islamic Jurisprudence, vol. 6, p. 112.
[3] - Ibn Abd al-Barr, The Comprehensive Remembrance of the Doctrines of the Jurists of the Countries and the Scholars of the Countries, Vol. 5, pg. 24, Al-Jassas, Ahkam Al-Qur'an, Part 1, p. 354, Al-Nawawi's explanation of Sahih Muslim, Vol. 6, p. 269, Provisions of International Humanitarian Law in Islam, p. 147

jurisprudence that it is not permissible to kill elders in military operations as long as they do not participate in military operations[1].

- Among the issues agreed upon by the jurists is the impermissibility of treachery in war, and what is meant here is the breach of trust and safety that the enemy obtains from his opponent. It is not permissible, for example, to grant enemy fighters safety and then fight them or conclude a non-fighting treaty with the enemy and then violate it[2].

- Muslim scholars have agreed that it is forbidden to kill the elderly, clerics, and the sick unless they participate in military operations.[3]

## 4- Al Iqtahad - Islamic doctrine :

Fiqh or Islamic doctrine plays a vital role in the IIHL as it give a comprehensive and rational explanation of Qurainic and Sunnah texts linked to war and its ethics . Islamic doctrine gave numerous rulings about what is allowed and what is not in war. There are many Islamic textbooks about war and

[1] - Al-Qurtubi, Al-Jami' Ahkam Al-Qur'an, Part 3, p. 240; Dr. Saleh bin Obaid Al-Harbi, Encyclopedia of Consensus in Islamic Jurisprudence, vol. 6, p. 121.
[2] - Ibn Al-Arabi, Arida Al-Ahwadi, vol. 7, p. 76 , Dr. Saleh bin Obaid Al-Harbi, Encyclopedia of Consensus in Islamic Jurisprudence, vol. 6, p. 161.
[3] - Al-Jassas, Ahkam Al-Quran, Part 1, p. 257, Al-Ahkam Al-Sultaniyya, p. 134, referred to in The Philosophy of War in Islam, Dr. Nadia Hassani Saqr, p. 149.

battles. Most Muslim jurists dealt with issues of war in chapters called “Al Jihad” and “ Al Seer,” and the books of jurisprudence of the four schools devoted special chapters to the rulings on war and the rulings related to it.

The opinions issued by a jurist on issues presented to him are called "fatwas." Several conditions are required for a person to be eligible to issue fatwas, the most important of which are the following[1]:

1- The person must have complete knowledge of the Qur’an and Sunnah and the sciences related to them.

2- He must have complete knowledge of the agreed - upon and disputed jurisprudential issues and the different jurisprudential opinions and the arguments of each one.

3- He must have complete knowledge of the science of jurisprudential principles, including its foundational concepts, the objectives of Islamic law, and the related sciences.

4- He must be aware of people's customs and the circumstances of the era in which the fatwa is issued.

[1] - See the conditions that must be met by the Mufti and the Fatwa, Resolution No. 153 (2/17) of the International Islamic Fiqh Academy, Organization of Islamic Cooperation, https://iifa-aifi.org/ar/2203.html.

5- He must have the ability to derive jurisprudential rulings from legal texts.

Furthermore, there are some limits that confine Islamic doctrine when it comes to issue fatwas and opinions regarding war which are:

-The fatwa must be based on valid Sharia evidence.

-The fatwa must not contradict the texts of the Quran and Sunnah, the objectives of Islamic law, and its general principles.

-The opinion of experts must be sought in matters that are outside the scope of Sharia sciences, such as medical and engineering matters.

## Other Sources:

In addition to the above sources, there are some additional sources of international humanitarian law, namely:

Peace Treaties Concluded by Muslim Leaders with Non-Muslims:

Throughout history, Muslims have concluded numerous treaties, peace agreements, and truces with their enemies. The primary objective of these treaties was to prevent

bloodshed, promote peace, and stop fighting, in accordance with the words of God Almighty: “But if they incline to peace, then incline to it and rely upon God. Indeed, it is He who is the Hearing, the Knowing.” These treaties and the provisions they contain, constitute an additional source of international humanitarian law, a guide for deriving rules relating to war.

It must be taken into account, when seeking guidance from the provisions of the agreements concluded by the early Muslims, the changes and circumstances of the era must also be taken into account, because the provisions change with the change of times and places. Likewise, when extracting the provisions of new issues, the provisions of modern international agreements and the provisions of international humanitarian law must always be respected.

## The commandments of the caliphs and their orders to the leaders of the armies:

The orders and commandments of the early Muslim leaders to the soldiers in the Islamic invasions and wars are considered sources of the IIHL. These orders and commandments included many of the principles of this law, and they must be taken into consideration as an important source of this law.

It was reported that Caliph Abu Bakr al-Siddiq advised Usama bin Zaid and his army, saying, “O people, stand, and I advise you with ten things, so remember them from me:do not betray, do not cheat, do not deceive, do not mutilate, do not kill a young child, an old man, or a woman, do not cut down palm trees or burn them, do not cut down a fruitful tree, and do not slaughter a sheep, a cow, or a camel except for food. You will pass by people who have devoted themselves to monasteries, so leave them to what they have devoted themselves to. You will come upon people who will bring you vessels containing various types of food. When you eat from them, part by part, mention the name of God over them. ..[1]”.

[1] - Al-Tabari’s History 3: 213, and Al-Kamil by Ibn Al-Athir 2: 162, referred to in the book “The Collection of Arab Speeches in the Flourishing Eras of Araba,” by Ahmed Zaki Safwat, Scientific Library, Beirut-Lebanon, Vol. 1, p. 187.

## Chapter three: characteristics of the IIHL:

The rules of the IIHL are characterized by their divine nature, which makes them distinguished from manmade laws. In other words, Islamic rules come from the creator of the whole universe for the interest of all human beings and are valid to be applied by any legal system. The Quran and Sunnah are full of rules that tackle war and its ethics. Furthermore, the idea of reward and punishment is associated with the IIHL rules, which make them more effective and functional on the ground. In addition, the IIHL contains both earthly and hereafter sanctions, which make it more effective in this field. In the following paragraphs, I shall illustrate these characteristics:

### 1- The divine nature of the IIHL:

The rules of the IIHL are characterized by their divine source, which makes them different from other laws. The Quran and Sunnah, as the main sources of the IIHL, give this law a special nature, as it's a part of the Muslim faith, beside its binding force as an applicable law. This character makes these rules more effective on the ground. Muslim warriors are less likely to breach the IIHL in comparison with other warriors. As the breach of this law is a sin in terms of

religion, beside its nature as a disciplinary offense and an illegal act.

When Muslim fighters refrain from sabotaging the property of enemies, they do so as a part of their religion, as Almighty Allah said, “Fight in the way of Allah those who fight you but do not transgress. Indeed. Allah does not like transgressors.. if we look closer at the first part of this 1" verse , we will recognize the aim of fighting in Islam “ in the way of Allah “ so the fight must be fair because Allah is just and does not like injustice . It must be against those who fight Muslims as Islam does not recognize the assault on states. Therefore, Muslims are not supposed to do offensive war, and their fight must be against those who fight them.

One can argue that there are several examples in Muslim history and even in modern times where some Muslims have breached the IIHL rules. Whatever the point of view of these allegations, we must judge the law by its provisions, not by the violations or errors that may occur in its application.

## 2-The International nature of the IIHL:

The IIHL is not a local legal system that applies within a specific community or country, but rather it is an

[1] - A trans of Quran .2:190

international law whose provisions apply at both the local and international levels to military operations that take place within or outside the territories of Islamic countries.

This law derives its international character from the fact that it is derived from the provisions of the Holy Quran, which was sent by the Lord of the Worlds to all people, as God Almighty says, “We have not sent you, [O Muhammad], except as a mercy to the worlds[1] ”. And in another verse of the Quran, He says, “We have not sent you, [O Muhammad], except as a bringer of good tidings and a warner to all mankind[2]”. So the provisions of this law, by virtue of their divine source, address all people and call for mercy and kindness to humanity and the rejection of the spirit of revenge, gloating, and destruction in military operations.

As a result of the international nature of the IIHL, any person who has suffered damages from violating the provisions of this law can sue the violating party and obtain appropriate judicial remedy or compensation.

[1] - Translation of the Holy Quran, 21/107.
[2] - Translation of the Holy Quran, 34/28.

## 3-The mandatory nature of the rules of the IIHL:

Islamic rules concerning war and preserving human rights during armed conflicts came in Mandatory legal wording. Numerous examples from the Quran and Sunnah illustrate this point. For instance, Prophet Mohamed (SAWS) used to say to his companions before every fight ," Do not kill a decrepit old man, or a young infant, or a woman; do not be dishonest about booty, but collect your spoils, do right, and act well, for God loves those who do well1".

The effects of the mandatory nature of the rules of the IIHL distinguish these rules from recommendations and religious advices, which have no legal value.

The results of the mandatory nature of the rules of the IIHL are as follows:

-The commander of the Muslim armies must direct the members of the armies and soldiers, each in his jurisdiction, to respect the rules of the IIHL, in addition to holding accountable those found to have violated these rules.

[1] - Mishkat al-Masabih 3956, Chapter 5b: Fighting in Jihad - Section 2, Book 19: Jihad, https://sunnah.com/mishkat:3956

-Members of Muslim armies have the right to refrain from implementing any order that violates the rules of the IIHL, given that the rules of this law rank higher in the hierarchy of legal rules.

-Civilians residing in hostile countries have the right to take refuge in the rules of the IIHL and to demand that Muslim forces respect the rules of this law.

-A breach of the rules of the IIHL, according to the gravity of this breach, will result in international, criminal, or civil liability, in addition to compensation if its conditions have been met.

## 4-Validity of application at all times and places:

The rules of the IIHL have a special nature that makes them applicable at all times. They contain general principles and foundations that make them applicable in all eras. For example, the legal rules included in the IIHL to protect civilians in times of war include general foundations that are applicable at all times without the need for any amendment or change. Through the mechanisms of extracting legal rulings, a legal ruling can be reached for any new issue.

Likewise, the rules of the IIHL relating to the protection of religious figures in times of war include general rules that

represent the constitution for the treatment of this category during military operations. Through the interpretation of these general rules, it is possible to reach a ruling on any new issues that may arise in practical application relating to this category, which makes this law applicable at any time, in any era, and in any place.

## Chapter four: Aims and principles of the IIHL:

### First: Aims of the IIHL:

The IIHL aims to protect people from the scourge of war, place restrictions on the use of force, and curb the spirit of revenge, destruction, and sabotage that fills warriors. The following are the most important objectives of this law:

### Protection of civilians:

The rules of the IIHL aim to protect civilians from the scourge of war. War in Islam is only a tool to repel aggression and remove injustice. It is not permissible in Islam to use war as a tool to harm or intimidate civilians. The Holy Qur'an and the Sunnah of the Prophet (SAWS)have emphasized the sanctity of the human soul, the inadmissibility of killing it . I shall demonstrate some Quranic verses and hadiths that address this point as follows:

The noble Quran is very keen to protect human life. Almighty Allah says," Because of that ,We ordained for the Children of Israel that if anyone

killed a person not in retaliation of murder, or (and) to spread mischief in the land , it would be as if he killed all mankind, and if anyone saved a life, it would be as if he saved the life of all mankind."[1] Therefore, from Islamic point of view killing an innocent soul is equivalent to killing all people. This shows how valuable and precious human life is and how big the sin of killing an innocent person is. It is considered an act of evil and a big sin.

Another justification for why the IIHL protects civilians is that war in Islam comes as a reply to transgression and must not extend to civilians who do not participate in military operations, and they did not commit any aggression.

Furthermore, preserving the human soul is one of the purposes of Islamic law, because man is God's successor on earth, and his protection is a duty. In chapter 2 verse 30 of the noble Quran almighty Allah said, "And (remember) when your Lord said to the angels, "Verily, I am going to place

[1] - Mohsin Khan, A translation of the Quran ,5:32.

(mankind) a vicegerent on earth." They said, “Will You place therein those who will make mischief therein and shed blood, while we glorify You with praises and thanks and sanctify You?" He (Allah) said, "I know that which you do not know."[1] In another verse Allah says, “And do not kill the soul whose killing Allah has forbidden, except for a just cause.”[2]

The word “soul” in this verse means the human soul, whether it is believer or unbeliever, male or female, and whatever its color, nationality, or race is. In another verse, God Almighty says about the characteristics of the believers, “ and they who do not call upon another god with Allah and do not slay the soul, which Allah has forbidden except in the requirements of justice… [3]"

In the Sunnah, we find many hadiths that forbid the killing of a human soul without a legitimate reason. It was narrated that Abu Hurayrah (may

[1] - Mohsin Khan, A translation of the Quran,2:30.
[2] - Mohsin Khan, A translation of the Quran,17:33.
[3] -Shakir ,A translation of the Quran25:68.

Allah be pleased with him) reported that the Prophet (SWAS) said, ''Avoid the seven destructive sins.'' They said: ''O Messenger of Allah, what are they?'' He said, ''Associating partners with Allah; magic; killing an innocent person except by legal right; consuming usury; consuming the property of an orphan; retreating from the battlefield; slandering chaste, innocent, and believing women.[1]''

On the authority of Abdullah bin Amr, he said: The Messenger of God, may God's prayers and peace be upon him, said: "Whoever kills a dhimmi[2], he will not find the fragrance of Paradise, and its fragrance can be found from a distance of forty years.[3]" This hadith embodies the magnitude of the sin committed by any person who kills a dhimmi.

[1] - Sahih/Authentic. - [Al-Bukhari and Muslim].

[2] - A non-Muslim living in an Islamic state with legal protection see: https://www.wordwebonline.com/search.pl?w=dhimmi

[3] -Sunan An-Nasa'I, 4750.

## Are all civilians protected in time of war?

Islam values the human's life. In times of war, Islam does not differentiate between people regarding their nationality or color or ethnic group or religion. The Prophet Muhammad (SWAS) said, "O people! Your God is one, and your forefather (Adam) is one. An Arab is not better than a non-Arab and a non-Arab is not better than an Arab, and a red (i.e., white tinged with red) person is not better than a black person, and a black person is not better than a red person ,except in piety[1]".

Therefore, protection of civilians in the IIHL extends to all types of civilians without any discrimination, whether they are Muslims or non-Muslims, whether they believe in heavenly religions or others, and whether they hold the nationality of the enemy state or the nationality of another state.

## Protecting victims of war:

Since honoring the human being and preserving his humanity is one of the goals of Islamic law, the rules of the IIHL consider protecting the victims of war, whether they are wounded, taken as prisoners, or dead , and caring for them and preserving their humanity as one of its goals.

[1] - Mosnad Ahmad, 22978.

Therefore, we find in the IIHL some rules for honoring the dead, identifying them, handing them over to their families, and burying the bodies of those whose families have not been identified. There are also provisions and rules for the care and treatment of the wounded, as well as rules for the care and treatment of prisoners.

## Protecting public and private property:

War in Islam is primarily defensive. Therefore, everything that deviates from the defensive nature of war falls within the circle of aggression, which is prohibited in the Almighty's saying, "And do not aggress[1]".

Accordingly, we find in the IIHL special provisions prohibiting the destruction of public and private property of the enemy that is not used in military operations. Sabotaging the civilian infrastructure of enemy countries is not permissible because it falls outside the scope of the defensive character of war in Islam and is considered an attack that only harms civilians.

For example, when the Muslims conquered the city of Jerusalem, the Caliph Umar ibn al-Khattab was inspecting the city. He knew that the Muslims had taken a grape orchard that belonged to the Romans, and when he saw that the

[1] - A translation of the Quran, 2:190.

Muslims had eaten its fruits, he brought the owner of the orchard and asked him to estimate the price of the orchard and paid it to him.

## Environment protection:

Islam gives the environment a special status. There are many verses in the Holy Qur'an that confirm that God Almighty created everything in the universe for the service of man and his well-being. It is mentioned in the Holy Qur'an that"And [He has subjected] whatever He multiplied for you on the earth of varying colors. Indeed, in that is a sign for people who remember. And it is He who subjected the sea for you to eat from it tender meat and to extract from it ornaments which you wear. And you see the ships plowing through it, and [He subjected it] that you may seek of His bounty; and perhaps you will be grateful.[1]"

Therefore, protecting the environment is a fundamental goal of the IIHL, because protecting it is protecting man and his existence, and destroying it is destroying man's existence. The IIHL is concerned with protecting the environment with its various elements in times of war, and its rules include many provisions prohibiting attacks on trees and rivers and destroying or polluting them.

[1] - A translation of Quran , 16:13-14.

Abu Bakr al-Siddiq[1] said in his famous will to one of his army commanders, “O people, stand still, that I may give you ten rules for guidance on the battlefield. Do not commit treachery or deviate from the right path. You must not mutilate dead bodies; do not kill a woman, a child, or an aged man; do not cut down fruitful trees; do not destroy inhabited areas; do not slaughter any of the enemies’ sheep, cows, or camels except for food; do not burn date palms, nor inundate them; do not embezzle (e.g. no misappropriation of booty or spoils of war) nor be guilty of cowardliness…You are likely to pass by people who have devoted their lives to monastic services; leave them alone."[2] This order emphasize the necessity of respecting the environment during military operations and not cutting down trees unnecessarily or destroying property and infrastructure, because all of these actions fall outside the scope of the defensive nature of war in Islam and represent a forbidden assault.

[1] - Abu Bakr Siddiq (R.A.), popularly known as Abu Bakr, is the first Caliph after the Prophet Mohammad( SAWS), https://www.islamicfinder.org/knowledge/biography/story-of-abu-bakr-siddiq-ra/

[2] - Islamic law and the rules of war, https://reliefweb.int/report/world/islamic-law-and-rules-war.

## Making fighting weapons and tools merciful and humane:

War is not permitted in Islam for the sake of war, but rather to achieve legitimate goals. Therefore, the use of weapons is limited to achieve these legitimate goals, and the use of inhumane weapons is considered an illegal act. In chapter 2 verse 190 of the Quran , Almighty Allah says, “And fight in the Way of Allah those who fight you, but transgress not the limits. Truly, Allah likes not the transgressors.”

Therefore, all forms of revenge, torture, and mutilation of the bodies of the enemies are prohibited in Islam. It was narrated that the prophet Mohamed (SWAS) said, “when a prophet from the prophets was stung by an ant, he ordered a colony of ants to be burned, and God most highly revealed to him, 'Because an ant stung you, you have burned a community which glorifies me."2 This hadith explains how the creator, glory be to Him, hates revenge and inflicting punishment randomly to befall the aggressor and others, and that he blamed a prophet of his for taking revenge on groups of insects (ants). So what

[2] - Bukhari and Muslim , Mishkat al-Masabih 4122

will divine judgment be like when that is done with man, the essence and reason for the creation of this universe!

Also, Ibn Mas'ud[1] (May Allah be pleased with him) reported that We were with the messenger of Allah (SWAS) on a journey when he drew apart (to relieve nature). In his absence, we saw a red bird, which had two young ones with it. We caught them, and the red mother bird came, beating the earth with its wings. In the meantime, the Prophet (SAWS) returned and said, "Who has put this bird in distress on account of its young? Return them to her." He (SAWS) also noticed a mound of ants, which we had burnt up. He asked, "Who has set fire to this?" We replied, "We have done so." He (SWAS) said, "None can chastise with fire except the God of the fire."[2] This hadith shows the extent to which Islam's mercy reaches living beings and how inflicting any kind of harm on them is one of the prohibited acts for which a Muslim is held accountable.

Shaddad b. Aus reported God's messenger (SWAS) said , "God, who is blessed and exalted has decreed that everything should be done in a good way, so when you kill, use a good method, and when you cut an animal's

[1] - One of the companions of the Messenger of God (SWAS).
[2] - [Abu Dawud], Riyad as-Salihin 1610 , https://sunnah.com/riyadussalihin:1610

throat, you should use a good method, for each of you should sharpen his knife and give the animal as little pain as possible."1 This hadith shows the extent of Islam's mercy on man and other beings and how it calls for alleviating the suffering of others even in the time of fighting, when man has the desire to take revenge on his enemy.

Also, it was narrated that Umar ibn Abd al-Aziz[2] wrote to one of his governors, "It has been passed down to us that when the Messenger of Allah, may Allah bless him and grant him peace, sent out a raiding party, he would say to them, 'Make your raids in the name of Allah in the way of Allah. Fight whoever denies Allah. Do not steal from the booty, and do not act treacherously. Do not mutilate and do not kill children.' Say the same to your armies and raiding parties, Allah willing. Peace be upon you."3.

It was narrated that 'Abdullah bin Ja'far[4] said, "The Messenger of Allah passed by some people who were shooting arrows at a ram. He denounced that and said, "do

[1] - Muslim, Mishkat al-Masabih 4073, https://sunnah.com/mishkat:4073
[2] -Omar bin Abdul Aziz, the most famous Muslim caliph (61 AH-101 AH), his reign was characterized by justice and interest in knowledge.
[3] - Muwatta Malik , https://sunnah.com/urn/509720 .
[4] - From the companions of the Messenger of God (SWAS) and narrators of hadith (1 AH - 80 AH)

not disfigure animals (by using them as targets)."1 This is because maiming animals by shooting them with arrows during military operations is an inhumane act and is considered an unjustified attack on animals, which remain in pain from their injuries for long periods. Therefore, the Messenger ( SWAS) ordered that it be prohibited during military operations.

## Is the saying that Islam was spread by the sword true?

Some people think that Islam is spread by the force of the sword and many people or nations embrace Islam unwillingly. This misconception is very common in western societies. In fact, this misconception is far away from the truth. Here is some evidence that confirms the invalidity of this belief:

- Almighty Allah made it clear in the Quran as he said, " There is no compulsion in religion. Verily, the right path has become distinct from the wrong path. Whoever disbelieves in Taghut[2] and believes in Allah, then he has grasped the most trustworthy handhold that will never break. And Allah is All-Hearer, All-Knower [3]". Allah makes

[1] - Sunan an-Nasa'i 4440 , https://sunnah.com/nasai:4440 .
[2] - Everything that is worshipped other than Allah.
[3] - Atranslation of Quran,2:256.

it clear in this verse that there is no compulsion in religion. Everyone is entitled to choose his own religion and everybody is welcome to embrace Islam willingly and with full conviction.

-Many countries were conquered by Muslims and their people entered Islam voluntarily and by choice, and its people continued to convert to Islam even after the demise of Islamic rule like Egypt, Maghreb countries such as Tunisia, Algeria and Morocco.

- The Islamic state ruled countries with a non-Muslim majority for long periods, such as India. It was ruled by Muslims for two hundred years. However, the non-Muslim majority in India remained in their religion. That is clear evidence that Islam did not spread by the sword.

-In the modern era, many non-Muslims, opponents of Islam, and famous people of the world entered Islam with full conviction and a free belief[1].

-The historian De Lacy O' Leary wrote: "History makes it clear, however, that the legend of fanatical Muslims sweeping through the world and forcing Islam at the point of the sword upon conquered races is one of the most fantastically absurd myths that historians have ever

[1] - https://en.wikipedia.org/wiki/List_of_converts_to_Islam.

accepted.[1]" This is the testimony of a well-known historian that vindicates any claim that Islam was spread by the sword.

## Second: principles of the IIHL:

In this subsection, I shall demonstrate in some detail the most important principles of the IIHL as follows:

## Fair treatment of enemies :

God Almighty loves justice in everything and with all creatures. If a person becomes your enemy, it does not mean that is the end of the world and he must die . The Messenger Muhammad (SWAS) ,even though the amount of physical and moral abuse he was subjected to, used to pray for his enemies from the polytheists to be guided to the straight path. He did not pray for them to perish or die. It was narrated that some followers of the prophet Mohamed(SWAS) said: "O Messenger of Allah! Thaqif[2] are razing us with their arrows, so supplicate to Allah against them!' So he said: 'O Allah! Guide Thaqif.[3]' This reflects the extent of the mercy and compassion that the Messenger had, even towards his enemies.

[1] - Islam at the Crossroads, London, 1923, p. 8.
[2] - An Arab tribe.
[3] - Jami` at-Tirmidhi 3942, https://sunnah.com/tirmidhi:3942 .

Another example is Omar Ibn Al-Khattab, who was the second caliph of Muslims and one of the fiercest enemies of Islam. He was harsh-hearted towards Muslims. He used to torture a slave girl he knew was Muslim from the beginning of the day until the end, then he would leave her at the end of the matter and say: "By God, I have only left you out of boredom.[1]" The prophet Mohamed (SWAS) called for him to be guided. It was narrated that prophet (SWAS) said: 'O Allah! Strengthen Islam with 'Umar bin Khattab in particular.2 "God Almighty responded to this call, and Omar bin Al-Khattab converted to Islam and played a great role in it until he became a caliph and a prince of the believers.

Islam urges dignified and kind treatment of enemies, because benevolence to the enemy is a noble characteristic. God Almighty says," Good and evil are not equal. Repel evil with what is better, and then you will see that one who was once your enemy has become your dearest friend.3"

[1] - 4) See the biography of Ibn Hisham (1/356) - The Beginning and the End (3/64) - Paths of Guidance and Right Direction (2/361), quoting from : https://shamela.ws/book/38114/260

[2] - Sunan Ibn Majah 105, https://sunnah.com/ibnmajah:105 .

[3] - A translation of Quran, 41:34.

Therefore, the rules of the IIHL are keen to provide fair treatment in the field of war with all parties, whether military or civilian, and open the way to stop the fighting at any time in order to spare bloodshed. One of the most prominent provisions included in that law in this regard is that if an enemy fighter declares his conversion to Islam during military operations, it is forbidden for Muslims to fight him. Even if converting to Islam is incorrect or a lie.

It was narrated that Al-Miqdad b. al-Aswad[1] told that he said, "Tell me, Messenger of God, supposing I meet an infidel and we fight together and he strikes one of my hands with his sword and cuts it off, then flies for refuge from me to a tree and says he has submitted himself to God (or, in another version, says when I intend to kill him that there is no god but God), shall I kill him after he has said it?" He replied, "Do not kill him." He protested, "But, Messenger of God, he cut off one of my hands." God's Messenger then replied, "Do not kill him, for if you do so, he will be in the position in which you were before you killed him, and you will be in the position in which he was before he made his testimony.[2]"

[1] - One of the companions of the Islamic prophet Muhammad.

[2] -Mishkat al-Masabih 3449, https://sunnah.com/mishkat:3449

## Justice with the enemy:

In chapter5 verse 8 of the noble Quran Almighty Allah says ," O you who believe! Stand out firmly for Allah as just witnesses; and let not the enmity and hatred of others make you avoid justice. Be just: that is nearer to piety; and fear Allah. Verily, Allah is Well-Acquainted with what you do.1"

The meaning of this verse is that Muslims must not be compelled by enmity and hatred to oppress their enemy. Justice with enemies and being kind to them is one of the characteristics of Muslims. Also, It is not permissible to kill civilians from the enemy, or harm them, or steal from them, or seize their wealth.

As part of benevolence to the enemy, it is forbidden to kill enemy members who come to Muslim camps to hear the word of God, so in this case, they must be protected until they return to their families. In this regard, Almighty Allah said :" and if anyone of the Mushrikun (polytheists, idolaters, pagans, disbelievers in the Oneness of Allah) seeks your protection, then grant him protection so that

[1] - Mohsin Khan, A translation of Quran.

he may hear the Word of Allah (the Qur'an), and then escort him to where he can be secure"[1]

Also, Muslims are commanded, after the war is over, to release the prisoners of the enemy as a matter of kindness to them and treat them with humane and dignified treatment.[2]

## The humane treatment of the enemy:

God Almighty has honored man and made him his successor on earth . In chapter 17 verse 70, Allah says, "And We have certainly honored the children of Adam and carried them on the land and sea and provided for them of the good things and preferred them over much of what We have created, with [definite] preference." And in another verse he says," And (remember) when your Lord said to the angels, "Verily, I will create a vicegerent on earth. " They said, "Will You place therein the one who will make mischief therein and shed blood, while we glorify You with praises and thanks and sanctify You. He (Allah) said, I know that which you do not know.3" Therefore, man is the main goal of the universe, and preserving his humanity is one of the goals of Islamic law

[1] - Mohsin Khan, A translation of Quran,9:6.
[2] - The quran ,47:4.
[3] - A translation of the Quran,2:30.

and the IIHL. Therefore, the human nature of a person remains during military operations and must be preserved, regardless of his gender, origin, or religion, and whether he is a civilian or an enemy.

The obligation of humane treatment of enemies entails several rules and provisions such as:

-It is not permissible to use inhuman means of killing against the enemies of Muslims, such as killing by torture, electric shock, poison, and chemical and biological weapons.

-It is not permissible to finish off the wounded and sick fighters who surrendered and are no longer able to participate in the fighting.

-It is not permissible to slap fighters in the face because this degrades their human dignity.

-It is not permissible to fight civilians who do not take part in military operations.

-It is not permissible to cut off the supplies of food, drink, blankets, clothes and health care for civilians, nor is it permissible to humiliate them,

treat them inhumanely, displace them, separate them from their families, or place them in places unfit for a dignified life.

## Fulfillment of the covenant:

Islam is based on respecting one's covenant even with his enemies. Almighty Allah says in the Quran," O ye who believe! Fulfill (all) contracts[1]."in another verse he says," and fulfil (every) engagement, for (every) engagement will be enquired into (on the Day of Reckoning).[2]"

It was narrated that the prophet Mohamed(SWAS) said, 'Whoever has a treaty between himself and a people, then let him not violate the treaty nor try to change it until its time has passed, or , if the other party breaches the covenanthe t Furthermore, in another hadith, [3]" Messenger of Allah (SWAS) said, "Whosoever possesses these four characteristics is a sheer hypocrite; and anyone who possesses one of them possesses a characteristic of hypocrisy till he gives it up. These are when he is entrusted with something, he proves dishonest; when he speaks, he tells a lie; when he makes a covenant, he proves

[1] - Yusuf Ali, A translation of the Quran , 5:1.
[2] - Yusuf Ali, , A translation of the Quran,17:34.
[3] - Jami` at-Tirmidhi 1580, https://sunnah.com/tirmidhi:1580 .

treacherous; and when he quarrels, he behaves in a very imprudent, evil, insulting manner.[1]"

Therefore, one of the principles on which the IIHL is based on, is the necessity of respecting the peace treaties and armistice agreements, or the handover of prisoners that are concluded between the parties. The Muslim forces must fulfill the peace and reconciliation agreements they have concluded with the enemies and implement the provisions they contain, even if they are not in their interest, in implementation of the Almighty's saying:" O you who have believed, fulfill the contracts."

The early Muslims concluded many peace treaties with the enemies, in accordance with the Almighty's saying:" And if they incline to peace, then incline to it and rely upon Allah. Indeed, it is He who is the Hearing, the Knowing."[2]

Islamic history provides many examples of Muslims fulfilling their covenants . It has been proven that the Messenger Muhammad adhered to treaties with the enemies and the conditions stipulated in them. For example, he concluded the Hudaybiyah Peace Treaty with the Quraish, and it was agreed that if anyone from the

[1] - Agreed upon by Al-Bukhari and Muslim, https://sunnah.com/riyadussalihin:1584 .
[2] - , A translation of Quran ,8:61.

Quraish came to him, he would take him back to them. Abu Rafi' came to him from Quraish and admired Islam and asked to stay. The Messenger refused and asked him to return to Quraish in fulfillment of the covenant.[1]

**Prohibition of destruction:**

Preventing corruption and destruction on earth is one of the goals of Islam. God Almighty said , "And do not do mischief on the earth, after it has been set in orderHe [2]" said in another verse referring to the punishment for corruption on earth, "The recompense of those who wage war against Allah and His Messenger and do mischief in the land is only that they shall be killed or crucified or their hands and their feet be cut off from opposite sides, or be exiled from the land. That is their disgrace in this world, and a great torment is theirs in the Hereafter.and [3]" in another verse God Almighty said , "And desire not corruption in the land. Indeed, Allah does not like corrupters.[4]"

Therefore, the rules of law are keen to prevent corruption and destruction in military operations because it is

[1] - Wah Abu Dawood (2785), Ahmad (8/6) (23908), and an-Nasa'i in "Al-Sunan Al-Kubra" (52/8) (8621).cited from : https://dorar.net/akhlaq/

[2] - A translation of the Quran, 7:56.

[3] - A translation of the Quran,5:33.

[4] - A translation of the Quran,28:77.

considered an attack prohibited by Sharia law and also deviates from the defensive nature of war in Islam and causes harm to people and their property. It was stated in the order of the Caliph Abu Bakr Al-Siddiq to the commander of his forces: "Do not cut down a fruitful tree, do not demolish a building, do not slaughter a sheep or a cow, do not lend anything except for food, do not drown a palm tree, or burn it."

Destruction means any unjustified destruction of the enemy's property and money, and it includes the destruction of the enemy's infrastructure, their homes, schools, hospitals, crops, animals, and other destructive acts involving money, things, and the environment.

## Prohibition of treason and treachery in war:

Islam is based on honesty and trust and the prevention of treachery and betrayal in all transactions. God Almighty says in the Holy Quran:" O you who have believed, do not betray Allah and the Messenger or betray your trusts while you know[1]". in the hadith, It has been narrated on the authority of Ibn 'Umar that the Messenger of Allah (SWAS) said, "When Allah will gather together, on the Day of Judgment, all the earlier and later generations of mankind, a flag will be raised (to mark off) every person

[1] -A translation of the Quran,8:27 .

guilty of breach of faith, and it will be announced that this is the perfidy of so- and -so, son of so- and -so (to attract the attention of people to his guilt)."1

In the IIHL, treachery and betrayal are considered completely prohibited acts in military operations. It is not permissible for Muslim forces to enter into a peace treaty, reconciliation, or truce with the enemy and then surprise him with fighting. It is also not permissible to give the enemy safety if he lays down his weapon and then kill him. It is also not permissible to ensure civilians safety and then fight them.

## The principle of war necessity:

One of the important principles on which the IIHL is based is military necessity. The origin of relations between countries in Islam is peace, friendship, and brotherhood relations, as all humanity is one family and of one origin " Adam ", peace be upon him. Therefore, war is an exception to this origin, and it is originally defensive, so it is not permissible to expand it and attack the rights of others under the pretext of war.

[1] - Sahih Muslim 1735a, Book 32, Hadith 10, quoted from (https://sunnah.com/muslim/32).

Also, the military necessity may appear during the course of military operations when a situation requires taking exceptional measures that violate the general provisions in the regulations of war. for example, if the killing of the prisoner is forbidden, but the prisoner in captivity was able to obtain weapons and attack Muslims with them, here is a military necessity to break the provisions that prevent the killing of the prisoner and may, in this case kill him in defense of Muslims.

Muslim jurists[1] have multiple opinions regarding military necessity, its nature, and what procedures it permits and what it does not permit. There is no space here to clarify them, and there will be several important considerations that I would like to emphasize, as follows:

-Military necessity is left to the discretion of the army commander. He is the one who determines whether there is a military necessity that calls for exceptional measures or not, and he is the one who determines the nature and extent of these measures.

[1] - For more details see: Muhammad Abu Zahra The theory of war in Islam, Nael Ghazi Masran, The Theory of Discrimination and Military Necessity in Islamic law Master Thesis , Boubacar Mustafaoui, The principle of military necessity in Islamic jurisprudence and international humanitarian law, Master Thesis.

-Military necessity is estimated as much as it is, so it is not permissible to take measures more than required by military necessity.

-Military necessity is, by its nature, temporary. It is not a continuous situation, and when this necessity ends, all exceptional measures that are taken in case of necessity stop. For example, if the military commander imposes a curfew on civilians due to military necessity, the curfew stops immediately when the military necessity ends.

## War is the last option:

Islam does not encourage war or offensive military operations, as it is a religion of peace. So if we research early Muslim battles we will find that they make military operations a last option. It was mentioned in the Holy Quran that :" And if they incline to peace, then incline to it [also] and rely upon Allah. Indeed, it is He who is the Hearing, the Knowing."[1] This noble verse calls on Muslims to accept the invitation of their enemies to reconcile and enter into peace. Islam calls on Muslims and the entire world to live in peace and to accept everything that leads to it.

For instance, early Muslims in Mecca did not fight disbelievers straightforward even though they were

[1] - A translation of the holy Quran,8:61.

persecuted and tortured to a severe degree. They asked prophet Mohamed (SAWS) to permit them to fight, but he did not allow them to do so .He was saying to them "Be patient. I have no order to fight" .

Another instance that shows how Islam dislikes war and calls for peace, In the battle of Badr ,which is the first battle in Islamic history, Prophet Mohamed (SWAS) sent Amar bin Alkatab[1] to Qurash to negotiate with them and advise them to go back to their homes, but they insisted on fighting Muslims. This event shows how Muslims are keen on peace and how they can forgive all pains and agony they suffered from and start a new page .

It follows from this rule that Muslim forces must - before resorting to any military operations against the enemy - take all available measures to end the conflict, whether through negotiation, mediation, settlement, or other methods of resolving disputes peacefully.

[1] - Omar was one of the most ardent enemies of Islam, and after God guided him, he became one of the people who most defended it until he became a caliph and a commander of the believers.

# Chapter five: some rules and applications of the IIHL:

The IIHL is full of legal provisions and rules relating to war, and in this chapter I will illustrate some of them as follows:

## The distinction between combatants and non-combatants:

Muslims knew the distinction between combatants and non-combatants since the early ages of Islam. The Messenger Muhammad (SWAS) issued directives to military leaders and soldiers to be kind to non-combatants. It is mentioned in the hadith books that he (SAWA) forbade the killing of women and children.[1] The killing of civilians, including women, the elderly, children, and others, is considered an assault[2] that is forbidden by God Almighty's saying, "And fight in the cause of God those who fight you, but do not aggress."

The wisdom behind preventing the fighting of these groups is the sanctity of life and blood that Islamic law has guaranteed to the human soul, as God Almighty says, "And do not kill the soul that God has forbidden except by

[1] - Sahih Muslim 1744a,https://sunnah.com/muslim:1744a.

[2] - Ihab Kamal Muhammad, killing innocent people between the tolerance of Islam and the laws of crime, https://www.alukah.net/sharia/0/6325

right." And in another verse, "Whoever kills a soul for other than manslaughter or for corruption in the land, it is as if he had killed all of mankind." And whoever keeps it alive, it is as if he saved all people alive."

The criterion for distinguishing between a fighter and a non-combatant is participation in military operations, whether in word or action. For example, a person who does not fight or participate in fighting is proven to be a civilian, so it is not permissible to fight him. However, if he or she begins to participate in military operations in any way, such as direct participation in military operations or in military training operations. The status of non-combatant is removed from him, along with the consequences that result from that.

The consequences of the distinction between combatants and non-combatants are many, the most important of which, in addition to the inadmissibility of fighting non-combatants, is that they enjoy the dignified humane treatment guaranteed by Islamic law to civilians, as we mentioned before in this study, in addition to the right to fair compensation for any damages they may suffer from.

## Legal Protection of civilians:

Islam values life and puts humans' life above all considerations. Therefore, killing innocent people is totally forbidden in Islam. Almighty Allah considers killing one person unlawfully as killing all human beings, as he said in the Quran :" Because of that, We ordained for the Children of Israel that if anyone killed a person not in retaliation of murder, or (and) to spread mischief in the land - it would be as if he killed all mankind, and if anyone saved a life, it would be as if he saved the life of all mankind.[1]" In another verse, almighty Allah said," And do not kill the soul which Allah has forbidden except by right[2]".

There is no limit to the categories of civilians protected in time of war in the IIHL . Everyone who does not participate in military operations is a civilian. The character of a person may change from a civilian to a warrior if he participates in military operations against Muslims. And vice versa, the attribute of a warrior may turn into a civilian if he stops participating in military operations against Muslims. Determining the character of a person as a warrior or a civilian is left to the Muslim forces, which are able, from the

[1] A translation of the Quran, 5:32.
[2] A translation of the Quran, of verse 6:151.

circumstances and conditions of the site, to determine this trait.

Civilians include all non-military people, which includes elderly, women ,men (adult) , children, and medical teams of enemy, religious people . I will highlight some provisions for the protection of these categories as follows:

# Legal protection of Women:

Islam puts women in a privileged position and considers them to be the mothers of the whole community. Islam is keen to provide protection and care for them in all stages of their lives. The rules of the IIHL do not require a specific age for women to enjoy protection in times of war, so women enjoy this protection regardless of their age.

The rules of the IIHL do not differentiate between women with regard to color, sex, nationality or race. All civilian women are entitled to receive the protection of this law.

Protection of women includes the prohibition of killing[1], protecting from physically harming, sexually or verbally assaulting her, or humiliating her in any way. If a woman is ill,

[1] - it has been narrated that The Messenger of Allah (SWAS) saw a woman who was killed in one of his expeditions, so he disapproved of the killing of women and children، Bulugh al-Maram ، Book ، 11https://sunnah.com/bulugh/16/11

medical assistance may not be cut off from her, nor may those in charge of providing this care be assaulted. It is not permissible for the armed forces to employ women in men's work or in humiliating or inconsistent work, because this violates the principle of honoring women in Islam and considering them as the mother of human beings.

Also, it is not permissible to force a woman who falls into captivity to convert to Islam, or to bargain with her to do so in any way, in application of the rule that there is no compulsion in religion.

It is not permissible to separate a mother from her children, or to keep them away from her in any way because that contradicts the rules of mercy that Islam encourages, and because of the unjustifiable harm to the mother.

## Legal protection of men:

Civilian men - non-combatants - enjoy the protection of the IIHL in times of war, and there is no discrimination between them on the basis of religion, race or nationality, so the Christian, Muslim, Jew and atheist enjoy the same level of protection.

**The most important aspects of protection include the following:**

Civilian men who are not participating in military operations may not be killed or harmed physically or mentally in any way.

It is not permissible to treat civilian men in an inhumane or degrading manner, or to violate their dignity in any way, because the Creator, Glory be to Him, the Most High, has placed man in the highest position in the universe, in addition to that it is considered a punishment for them for no sin they have committed.

As for civilian property, the rule is that property has special sanctity. It is not permissible to attack, steal, or destroy the property of others except for a legitimate reason. In the field of the IIHL , civilian property has a special sanctity. It is not permissible to attack it, steal it, or detract from it during wartime. The injured civilian may resort to the Muslim ruler to return his property, or to the judiciary if necessary.

With regard to health care for civilian men during times of war, the rule is that they enjoy full health care that they enjoy in times of peace, and Muslim forces may not deprive them of it or cut off any health supplies that may be sent to them, in accordance with the rules of mercy and good treatment that characterize the IIHL.

Likewise, it is not permissible to force civilian men to join the Muslim military forces, and it is not permissible to employ them in any work without their consent and in exchange for fair compensation.

## Protection of the elderly:

The rules of the IIHL protect the elderly, and they are a weak group that Islam is keen to take care of them in times of war and peace alike. The rules of the IIHL do not discriminate between the elderly because of religion, color, race or nationality. Everyone enjoys the same rules without discrimination. Muslims, Christians, Jews, Buddhists and other people of religion enjoy the protection of the IIHL, just as atheists and those without religion enjoy the same protection. The basis for this protection is what was stated in the orders of the early Muslim leaders regarding the prohibition of killing elders. Protection includes the prohibition of killing elderly civilians or subjecting them to any kind of physical or psychological abuse, because all of this contradicts the honoring of man by almighty Allah and against the principle of the sanctity of the human soul in Islam. It is not permissible for the Muslim forces to strike the places of residence of the elderly, or endanger them, or prevent the delivery of food and medicine to them, because that violates the morals of war and rules of mercy in Islam.

In the event that the lands on which the elderly reside fall into the hands of the Muslim forces, then it is not permissible to assign them to hard work, and they must always be cared for and treated humanely.

It is also not permissible to force the elderly to embrace the Islamic religion, because the Almighty Allah says: “There is no compulsion in religion.”

## Legal Protection of Laborers:

Islam gives special care to workers, urges good treatment of them, grants them all their financial and health rights, and prohibits humiliating or treating them inhumanely. It is narrated that prophet Mohamed (SAWS) said: “Give the hireling his wages before his sweat dries.[1] “. With regard to the worker's wages, the Messenger of God said: "Allah, the Exalted, says: 'I will contend on the Day of Resurrection against three (types of) people: One who makes a covenant in My Name and then breaks it; one who sells a free man as a slave and devours his price[2]; and one who hires a workman and having taken full work from him, does not pay him his

[1] - Mishkat al-Masabih 2987,https://sunnah.com/mishkat:2987

[2] - What is meant here is the prohibition of cheating and selling a free person as a slave even though he is not a slave, noting that slavery was permissible at the time of the emergence of Islam, and Islam has succeeded in preventing its sources.

wages[1]" Islam is calling for good treatment of workers and not exhausting them with hard work.

In times of war, the IIHL grants special treatment and protection to laborers, and does not consider them as a target for military actions. The Messenger of God (SWAS) forbade the killing of hired laborers in war[2] .

The most important provisions for laborers' legal protection in times of war are the following rules:

-Workers must be protected from all types of physical harm. They must not be killed, tortured, or made the target of military operations.

- Workers must be treated humanely and with dignity. They may not be insulted or treated inhumanely in any way.

-It is not permissible to employ workers in times of war without their consent, and it is not permissible to employ them except for a fair compensation equal to what a Muslim who works a similar job gets.

-All workers in the hostile state enjoy the protection of the IIHL, regardless of whether they have the nationality of the

[1] - Riyad as-Salihin 1587,https://sunnah.com/riyadussalihin:1587

[2] - Sunan Abi Dawud 2669,https://sunnah.com/abudawud:2669

hostile state or another, and regardless of their religion, color, or nationality.

In addition to the above, workers in times of war enjoy all other rights enjoyed by civilians, provided that they do not participate in military operations.

## Legal protection of tourists:

Islamic law guarantees special treatment for everyone who enters a Muslim country for the purpose of tourism. The tourist is considered to be in a safety contract with the Muslim state throughout his stay there, and he has - as a general rule - the rights and duties of its citizens in accordance with what is approved by the state's law. The Islamic State is responsible for protecting the soul of the tourist. And his money, honor, and family throughout his stay.

In times of war, the rules of humanitarian law guarantee special protection for the tourist and his family. It is not permissible to attack tourists who are in the Islamic State, even if they hold the nationality of the enemy state or the nationality of an allied state. This is because they are in a safety contract with the Islamic state and because they are civilians who enjoy the legal protection that civilians enjoy in wartime.

These provisions that the tourist enjoys are waived if he breaks the security contract and participates in military operations against the Muslim state.

## Legal Protection of Children:

Islam places the child in a special and distinguished position and surrounds him with a fence of rights and legal protection at all stages of his life's development. It requires choosing his parents well so that they are able to raise him properly and requires providing the necessary health care to the mother throughout the pregnancy in order to protect the fetus. Then it arranges for the newborn a set of rights and guarantees that he is guaranteed a sound upbringing and a decent life consistent with God Almighty's honoring of man.

In the IIHL there are explicit texts on the legal protection of children in times of war. It has been narrated that the Prophet (SWAS) said "Fight in the name of God and for the sake of God, fight those who disbelieve in God. Fight, and do not go to extremes, do not deceive, do not mutilate, and do not kill a newborn" [1]. There are many hadiths mentioned in this senseThese hadiths and the [2].

[1] - Jami` at-Tirmidhi 1408,https://sunnah.com/tirmidhi:1408

[2] - Sunan Ibn Majah 2857https://sunnah.com/ibnmajah:2857, Sunan Ibn Majah 2858,https://sunnah.com/ibnmajah:2858,
Sahih Muslim 1731a, b,https://sunnah.com/muslim:1731a

subsequent orders of Muslim leaders not to kill children during military operations, and the opinions of jurists in this regard, have become the basic rule for protecting children in times of war.

There are many provisions to protect children from the scourge of war, the most important of which are the following:

-It is not permissible to make children a direct or indirect target of military operations.

- it is not permissible to treat children inhumanely, humiliating way, or employ them in humiliating work.

- It is not permissible to separate children from their families, because this causes them psychological pain and conflicts with the principles of mercy and kindness on which Islam is based.

-It is not permissible to differentiate in the treatment of children based on considerations related to gender, religion, nationality, race or color.

## Legal protection of the environment:

Islam protects the environment and nature and is keen to ensure that they play its functional role in serving human being. Almighty Allah has created the entire cosmos for

human beings. Almighty Allah said in the Quran “It is He who created for you all of that which is on the earth”. In another verse of the Quran he says, “And He has subjected to you whatever is in the heavens and whatever is on the earth - all from Him. Indeed in that are signs for a people who give thought”. Also, animals, plants and all other creatures have their rights to live in peace. Therefore, transgress on all living creatures are an unlawful action and considered as an evil deed in Islam.

Many verses of the Quran forbid doing mischief on earth. Almighty Allah said in the Quran “And do not do mischief on the earth, after it has been set in order, and invoke Him with fear and hope. Surely, Allah's Mercy is near unto the good-doers.” In another verse he said, “And remember when He made you successors after the 'Aad and settled you in the land, [and] you take for yourselves palaces from its plains and carve from the mountains, homes. Then remember the favors of Allah and do not commit abuse on the earth, spreading corruption."

There is no doubt that environmental destruction, tree cutting, air pollution, and all other forms of environmental pollution – as a general rule - are a form of corruption that is prohibited in Islam.

On another scale, there are many hadith that emphasize how protecting the environment is fundamental in Islam. It was narrated that Ibn Mas'ud (May Allah be pleased with him) reported: “We were with the Messenger of Allah (SAWS) during a journey. He went to ease himself. We saw a bird with her two young ones and we captured her young ones. The bird came and began to spread its wings. The Messenger of Allah (SWAS) came and said: Who grieved this for its young ones? Return its young ones to it[1].

Also, the prophet Mohamed (SAWS) prohibited shooting animals as it was reported that “ Hisham bin Zaid said: Anas and I went to Al-Hakam bin Aiyub. Anas saw some boys shooting at a tied hen. Anas said, "The Prophet has forbidden the shooting of tied or confined animals[2]". In other hadith it was narrated that the Prophet (SWAS) forbade the killing of an animal or other living thing after tying them. " Also, The Prophet (ﷺ) cursed the one who did Muthla( mutilation )to an animal.

There are many provisions that regulate the legal protection of the environment in the IIHL, the most important of which <u>are the following</u>:

[1] - Sunan Abi Dawud 2675,https://sunnah.com/abudawud:2675

[2] - Sahih al-Bukhari 5513,https://sunnah.com/bukhari:5513

- As a general principle, it is prohibited to target the trees, forests, fields, and plantations on the land of the enemy.

- As a general principle, it is not permissible to destroy wells and target rivers and other water resources of the enemy.

- As for weapons of mass destruction, which may cause unlimited damage to the environment, the general rule is that the use of chemical, biological, and bacteriological weapons and like weapons, in military operations is prohibited[1].

If there is a military necessity to strike any element of the environment, the matter should be limited to the extent of this necessity, pursuant to the rule of necessity that permits prohibitions and necessity is estimated to its extent.

## Protecting public and private property:

**Public property:**

War in Islam is primarily defensive. Weakening the enemy, breaking his strength, and making him unable to fight Muslims is the primary combat goal of war in Islam. Therefore, everything that deviates from this combat goal is,

[1] -

as a general rule, illegal. For example, the enemy's public property, such as buildings. Public offices, public hospitals, and infrastructure - as a rule, it is not permissible to target them in military operations, as they deviate from the defensive goal of war in Islam.

**Private property:**

Islam respects the private property of individuals, criminalizes assault on it, and sets penalties to punish the aggressor. It is not permissible for a Muslim to trespass on the property of others or take it unlawfully. This rule applies to the funds of Muslims and non-Muslims as well. It is not permissible for a Muslim to infringe on the funds of non-Muslims under any circumstances. This rule applies in times of war, as follows:

- During military operations, Muslim forces are not permitted to attack, steal, or damage private property of citizens in any way.

- During military operations, Muslim forces may not attack banks and seize their funds unless it is proven that these funds are used in fighting against Muslims.

-It is not permissible to destroy, burn, or damage the private real estate property of civilians during combat

operations in any way, because this property has a special sanctity in Islam.

-It is permissible for the concerned parties to resort to the Muslim ruler to demand the return of his money that was unjustifiably attacked during the war, or to resort to the judiciary to obtain just compensation.

-These rules apply to all civilians, regardless of their nationality, religion, ethnic origin, color, or the country to which they belong.

## Legal protection for those who were forced to fight:

Among the important provisions contained in the law, which are unique to this law, are the rules that require refraining from fighting those who are forced to fight among the enemy. These provisions find their origin in a practical application issued by the Messenger, may God bless him and grant him peace, where it was stated: "I have learned that men from Banu Hashim and others were expelled against their will and had no need to fight us. So whoever meets anyone from Banu Hashim should not kill him, and whoever meets Abu Al-Bakhtari bin Hisham bin Al-Harith should not

kill him, and whoever meets Al-Abbas should not kill him, for he only went out forcibly[1]".

## Legal protection of the Wounded and sick:

Based on the defensive goals of war in Islam, military operations must always be directed at combatants in the enemy's army and not at civilians and anyone who cannot carry weapons, such as the sick and wounded. The rules of the IIHL give special legal care to these people, so it is not permissible to fight them or expose them to danger in any way.

Based on this functional concept of war in Islam, It was narrated that the Messenger Muhammad (SWAS) had ordered, upon the conquest of Mecca, not to finish off a wounded man[2], because the legislative reason for fighting enemy fighters was to weaken them and protect Muslims. If the strength of the fighter was removed and he was injured, then the reason for fighting him was eliminated.

Based on the mercy and tolerance policy of Islam, the prophet Mohamed peace and blessing of Allah upon him

[1] - Subul al-Huda wa al-Rashad, vol. 4, p. 55, referred to in "The Ethics of War in Islam," Muhammad Iqbal al-Naiti al-Nadawi, p. 106.
[2] - Ibn Abi Shaybah, The Book of Jihad, vol. 7, p. 675.

used to command his companions and leaders of armies to heal the wounded and injured during armed conflicts.

## Humane Treatment of dead bodies:

Islamic law or so-called " shareeh " has honored human in his life and death . Mutilate of Corpse is prohibited in Islam under any circumstances or by any means or for any reasons. Retaliation and revenge are not allowed in Islamic law there are some hadith of the prophet Mohamed that prohibited mutilate. It was narrated that The Prophet (SAWA) forbade robbery (taking away what belongs to others without their permission), and also forbade mutilation (or maiming) of bodies[1]. Also it was narrated that The Messenger of Allah [SAW] used to stress charity in his sermons, and prohibit mutilation[2]."

It was narrated that Safwan bin ‘Assil said:“The Messenger of Allah (SWAS) sent us in a military detachment and said: ‘Go in the Name of Allah, and in the cause of Allah. Fight those who disbelieve in Allah. Do not mutilate, do not be

[1] -Sahih al-Bukhari 2474, Book 46, Hadith 35.
[2] - The Prohibition of Mutilation, Book 37: The Book of Fighting [The Prohibition of Bloodshed]
https://sunnah.com/nasai:4047

treacherous, do not steal from the spoils of war, and do not kill children.[1]'".

Also, Because Islam came as a mercy to all creatures, mutilation of animals is not allowed in Islam as it was narrated that "The Messenger of Allah (SAWA) forbade mutilating animals.[2]"

Also, Almighty Allah says :" O you who have believed, be persistently standing firm for Allah, witnesses in justice, and do not let the hatred of a people prevent you from being just. Be just; that is nearer to righteousness. And fear Allah; indeed, Allah is acquainted with what you do. "[3]

In interpreting this verse, Imam Al-Qurtubi says:"this verse indicates that the disbelieving of a disbeliever does not prevent us to be fair with him. They ( the disbelievers who are in war with us ) have to be fought, and take as war prisoners According to what is due to them . It is not permissible to mutilate their bodies. If they kill our women

[1] - Sunan Ibn Majah 2857,Chapter 38: Order of the leader, Book 24: The Chapters on Jihad
https://sunnah.com/ibnmajah:2857.
[2] - Sunan Ibn Majah 3185,Chapter 10: Prohibition of tying up animals (and killing them) and mutilation, Book 27: Chapters on Slaughtering,https://sunnah.com/ibnmajah:3185.
[3] - A translation of Quran, 5:8.

and children and make us sad because of that, it is not permissible for us to do the same."[1]

## The prohibition of slapping an enemy:

Islam comes to enhance the morals and manners of mankind. Hatred and enmity that a normal person has towards his enemy could lead him to do inhuman actions. Islamic law puts good manners and morals first in armed operations. Therefore, one can feel this sense in reviewing the rules of fighting in Islam.

One of these rules is the prohibiting of slapping the face of the combatant .There are more than hadith that prohibited slapping the face. Abu Huraira reported Allah's Apostle (SAWA) as saying "When any one of you fights with his brother, he should spare his face"[2]. Also, Abu Hurairah narrated that the Messenger of Allah (SAWA) said: "When any of you fights, he must avoid (striking) the face[3]." Abu Huraira reported Allah's Messenger (SAWA) as saying: "when any one of you fights with his brother, he should not slap at the face[4]."

[1] - Al-Qurtubi, Al-Jami` li-Ahkam al-Qur'an, vol. 6, p. 110.

[5]-Sahih Muslim 2612 c, Book 45, Hadith 150 . Also Abu Huraira reported Allah's Messenger (SAWA) as saying:"When any one of you fights with his brother, he should avoid the face, Sahih Muslim 2612 f, Book 45, Hadith 153 .

[6]- Agreed upon. Narrated by Al-Bukhari (2559) and Muslim (2612).

[7]-Sahih Muslim 2612 d,Book 45, Hadith 151

## Legal protection of places of worship[1]:

Islam gives special treatment of places of worship like churches, temples and mosques. It is not allowed to attack these places at time of war for any reason. Islam provided freedom of religion to all people.

Almighty Allah says in the Quran:" And were it not that Allah checks the people, some by means of others, there would have been demolished monasteries, churches, synagogues, and mosques in which the name of Allah is much mentioned. And Allah will surely support those who support Him. Indeed, Allah is Powerful and Exalted in Might.[2]" God has legislated fighting to defend places of worship, such as churches, temples, mosques, and others. Islam came to confirm this approach, forbidding attacks on churches, temples, and others in times of war. It is not permissible for Islamic forces to blow up churches, temples, and other places of worship, even if the enemy attacks and attacks mosques.

[1] -Protecting places of worship in Islamic law and international humanitarian law, Fawzia Fatsi, Journal of Islamic Sciences and Civilization, Volume 7, Issue 3, 2022, p. 647.

[2] - A translation of the Quran, 22:40.

There many accidents emphasize the principals of protecting worship places in the IIHL. For instance When Omar ibn al-Khattab entered Jerusalem, he found a building for the Jews, most of which was covered with dirt. He asked about it and they told him that it was a structure for the Jews, so he removed the dirt from it so that the Jews could perform their rituals. This is conclusive evidence of Islam's protection of other religions. When Amr ibn al-Aas conquered Egypt, he gave security to its people, their churches, and their Copts, and he did not attack or vandalize any of the Christian places of worship. The ancient Egyptian churches remain an eyewitness to Islam's protection of places of worship.

## Protection of the messengers of the enemies:

One of the matters agreed upon is that it is not permissible to kill the messengers of the enemies. If the two warring parties are in the stage of negotiation and the exchange of messengers, it is not permissible to kill the messengers because of the treachery and deceit that this involves, and because the messengers' job is to convey views and bring them closer together, not to fight. It was narrated

that prophet Mohamed in one hadith emphasized that the messengers of enemies are not to be killed1.

**Omar bin Al-Khattab and the conquest of Jerusalem:**

It is mentioned in Islamic history books that when the Caliph of the Muslims, Omar bin Al-Khattab, went to conquer Jerusalem, he found the Temple Mount covered with dust, so he cleaned it himself and removed the dust from it. He also refused to hold prayers in a place where the Christians lived, lest the Muslims follow his example and change the identity of the place[2]. This was an application of the principles of the IIHL that protect places of worship and prohibit their destruction in times of war.

**Mercy of Salah Aldeen :**

It was reported that Salah al-Din al-Ayyubi , after the conquest of Jerusalem, concluded a peace treaty with the Crusaders on the condition that they leave the city safely, in return for paying ten dinars for a man, five for a woman, and two dinars for a boy. The Grand Patriarch was among those who went out

[1] - Al-Mustadrak ala al-Sahihain, Part 3, p. 599

[2] - Shafiq Jasser Ahmed Mahmoud, the Omari Conquest of Jerusalem: A Model for Calling to Islam through Action and Example, p. 192.

carrying the sale money (churches) and the relics of mosques that the Crusaders had plundered in their conquests. Some Muslims said to Salah al-Din: This patriarch is able to fight the Muslims with this money! Salah al-Din said: Islam does not know treachery and let him go out with his money.

Also, it is said that a group of noblewomen and princesses said to Salah al-Din while leaving Jerusalem: "Oh, Sultan! You have bestowed upon us life, but how do we live with our husbands and children in your captivity?! Sultan! Grant us our husbands and children, for if you do not do that, you will surrender us to shame and hunger." So Salah al-Din was affected by this, so he gave them their men[1].

## Robert of St. Albans:

It is natural for the heart of the fighter to be filled with hatred, malice and resentment towards the opponent, his country and his people. This is a

[1] - Dr. Abdullah Naseh Alwan, Saladin Al-Ayyubi, the Hero of Hattin and the Liberator of Jerusalem from the Crusaders, Dar Al-Salam for Printing, Publishing and Translation, p. 53.

natural feeling imposed by human nature. Your enemy targets you, so either you kill him or he kills you. But to leave your army, your country and your people and join your enemy, his country and his people is an unnatural matter and there must be a real motive and motivation behind it that transforms all these feelings and turns them upside down. If things develop further and the matter does not stop at joining the enemy country and embracing its religion and matters reach the point of the fighter joining the ranks of the forces that fight his armies, then it is a more amazing matter and this is what actually happened with the leader Robert of St. Albans.

"Robert of St. Albans (died 1187) was an English templar knight who converted to Islam from Christianity. He led an army for Saladin against the Crusaders during the Battle of Hattin as well as the reconquest of Jerusalem, which was at the time under the control of the Franks. Robert eventually married the niece of Saladin, but was killed shortly

after outside Jerusalem. Robert's conversion to Islam caused significant dismay among the Christians and sparked ill-will toward the Knights Templar in general."1

**Mohamed Ali Rashwan :**

The Muslim fighter is endowed with the principles of humanity, mercy and respect for human rights. One of the recent examples set by Muslim athletes in this field is the famous judo player Mohamed Ali Rashwan, who refused to finish off his opponent Yasuhiro Yamachi in the injured right leg muscle at the 1984 Los Angeles Olympics, and was satisfied with obtaining the silver medal. At the same time, he received an international fair play award in honor of his noble conduct[2].

## Samarkand:

According to the laws of conquest in Islam, which were applied in the early ages of Islam when the world was composed of several great empires and the use of force was the law of the world, Muslim forces must, before conquering any country, offer its people to enter Islam or conclude a treaty and pay tribute or war. Despite these clear rules

[1] - Quoted from : https://dbpedia.org/page/Robert_of_St._Albans.

[2] - https://www.ijf.org/history/hall-of-fame/108

applied by the early Muslims, Qutayba bin Muslim[1] missed out on offering these options to the people of Samarkand[2] and conquered it. When the people of Samarkand learned of these rules and that he should have offered its people to enter Islam first, they filed a complaint to Caliph Omar bin Abdul Aziz, who in turn referred the complaint to the judiciary. The judiciary summoned Qutayba and when it was verified that the matter was correct, it ordered Qutayba to leave and withdraw from Samarkand. Qutayba actually carried out the court's ruling and withdrew with his army from Samarkand[3].

## Conclusion

Islam recognized international humanitarian law more than fourteen centuries ago. The texts of this law include provisions that guarantee the protection of human beings and the preservation of their humanity in times of war. Thanks to the universal principles and foundations contained in this law, it has become applicable in all eras and countries. Despite the importance and effectiveness of this law,

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1 - "Qutaybah ibn Muslim (died 715) was an Arab general under the caliphs ʿAbd al-Malik and ʿAbd al-Walīd I whose conquests in Afghanistan and Central Asia helped bring the Umayyad caliphate to the height of its power". Quoted from: https://www.britannica.com/biography/Qutaybah-ibn-Muslim

2 -" Samarkand is a city in southeastern Uzbekistan and among the oldest continuously inhabited cities in Central Asia." Quoted from: https://en.wikipedia.org/wiki/Samarkand

3 - https://azon.global/en/posts/Personality/qutayba-ibn-muslim-and-the-spread-of-islam-to-central-asia-1757

humanity still needs to learn more about its provisions and rules. This book is a modest attempt in this direction.